IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1066 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH H RAJPUT

Versus

PREMLATA VASANTRAO

Appearance:

MR PRANAV G DESAI for Petitioner

MR KIRIT R RAVAL FOR MR AD SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 3

MR HL JANI Ld. APP for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 15/09/2000

ORAL JUDGEMENT

In this acquittal appeal impugned judgment and order of acquittal dated 18.11.1989 rendered by the Learned Judicial Magistrate, First Class, (Municipal)

Vadodara in Criminal Case No. 8180/1986 has been brought under challenge.

Brief facts of prosecution case indicate that at about 9.45AM on 26.8.86 the complainant had an occasion to visit the hotel in the name and style of "Kenara Coffee House" for obtaining sample of groundnut oil. He accordingly purchased 375 grams of groundnut oil from the accused Pandurang Madhav Kudva (Accused no. 2). After following the procedure for preparation of sample, the complainant sent one of the three samples to the Public Analyst, who reported that the sample was not according to the standard prescribed under the Prevention of Food Adulteration Rules and it smelt castor oil. After sanction according to the law was granted for filing the complaint, the matter went before the learned Magistrate, who upon conclusion of the oral evidence and after hearing the parties acquitted the respondents herein (Accused persons) of the offences punishable under sec. 7 read with sec. 16 (1) of the Prevention of Food Adulteration Act, 1954 ('PFA Act' for short) charged against them.

It would appear from the detailed judgment of the learned Magistrate that he acquitted the accused persons, inter alia on the ground that the sanction was not granted after applying the mind as well as it did not contained reasons; that the complainant did not have required experience for acting as a Food Inspector and the groundnut oil in question was not for sale, but was meant for preparation of food articles in the hotel. The learned Magistrate has also acquitted the accused persons upon appreciation of evidence regarding taking of sample and other formalities.

When this appeal came up for final hearing, it was submitted by Mr PG Desai learned advocate appearing for the appellant (Ori. complainant) as also learned APP Mr. Jani that the impugned judgment of acquittal cannot be sustained on the ground of sanction as also required qualifications of the Food Inspector. In support of their submissions, they made a reference to the decision of Hon'ble Supreme Court in the case of Suresh H. Rajput & Ors. vs. Bhartiben Pravinbhai Soni & Ors., reported in (1996)7 SCC p. 199. They read the following observations head noted from para-12 and 14 of the citation:

"The analysis report which was placed before the Local (Health) Authority and the other pertinent material in connection therewith have been placed

before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh the pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weight and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents. (para 12)

The Magistrate illegally proceeded on the assumption that the Food Inspector did not have training for required number of days and that, therefore, he was not competent to take the samples. The qualifications of the Food Inspector cannot be challenged in collateral proceedings. What is material is whether the Food Inspector had taken the samples in accordance with the provisions of the Act or the rules made thereunder. In case the Court finds that if he committed any contravention, what would be its effect on the prosecution is a matter to be considered but his qualifications cannot be looked into when he lays the prosecution for adulteration of the articles of food under the Act."

Mr Kirit R Raval learned advocate appearing for the accused persons conceded that above proposition of law would squarely apply to the findings in respect of sanction and requisite training/experience and the finding of the learned Magistrate cannot be sustained in view of this decision. He further canvassed that admittedly, the sample of groundnut oil was taken from hotel with which the respondents-accused were concerned. The groundnut oil from which the sample was taken by the complainant was obviously not meant for sale, the same was stored for the purpose of preparing food articles in the hotel. He read the evidence in respect of this finding as also observations of the learned Magistrate. The learned Magistrate has referred to number of decisions and it would clearly appear there from that when a particular article is not meant for sale, conviction under sec. 7 read with sec. 16(1) of the PFA Act for such article can hardly be canvassed. No exception could be pointed out on behalf of the

prosecuting agency before this Court. In that view of the matter, the acquittal on that ground will stand.

In view of what is stated above, it will not be necessary to deal with the further appreciation of evidence with regard to following the procedure of taking and forwarding of the sample.

In the result, this appeal will have to be dismissed. Order accordingly.

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